IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 35 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF WEALTH TAX

Versus

SUBODHCHANDRA CHATURBHUJDAS

Appearance:
MR AKIL KURESHI with MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 22/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue,

the following question is referred to us for our opinion in respect of assessment year 1976-77 :-

"Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal has been right in law in confirming the order of the Appellate Assistant Commissioner in setting aside the order of the Wealth-tax Officer passed under section 16(3) of the Wealth-tax Act, 1957 with a direction to frame the fresh assessment keeping in view the provisions of Rule 1BB of the Wealth-tax Rules ?"

2. At the hearing of the reference, Mr Akil Kureshi, learned counsel for the revenue submitted that the the provisions of Rule 1BB of the Wealth-tax Rules, 1957 could not have been applied to the period prior to 1.4.1979, as Rule 1BB of the Wealth-tax Rules was introduced prospectively and not retrospectively. Mr Kureshi, however, fairly states that the controversy is now concluded by the decision of the Apex Court in Commissioner of Wealth-Tax vs. Sharvan Kumar Swarup & Sons, (1994) 210 ITR 886, wherein the Apex Court has held as under :-

"Rule 1BB of the Wealth-tax Rules, 1957, which came into force on April 1, 1979, prescribing the method for valuing a house wholly or mainly used for residential purposes, merely provides a choice amongst well-known and well-settled modes of valuation. Even in the absence of rule 1BB, it would not have been objectionable, nor would there have been any legal impediment, to adopt the mode of valuation embodied in rule 1BB, namely, the method of capitalization of income on a number of years' purchase value. The rule was intended to impart uniformity in valuation and to avoid vagaries and disparities resulting from application of different modes of valuation in different cases where the nature of the property is similar.

Rule 1BB partakes of the character of a rule of evidence. It deems the market value to be the one arrived at on the application of a particular method of valuation which is also one of the recognized and accepted methods. The rule is procedural and not substantive and is application to all proceedings pending on April 1, 1979, when the rule came into force.

Procedural law, generally speaking, it applicable to pending cases. No suitor can be said to have a vested right in procedure."

3. In view of the above principle laid down by the Apex Court, we have no hesitation in answering the question in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-